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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-80-10 et seq.
Regulation title	Virginia Solid Waste Management Regulations
Action title	Waste Pile Permit by Rule
Document preparation date	August 6, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apr.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Applicants wishing to store waste in piles must obtain a full permit from the department. Processing a full permit can be time consuming and costly. The requirements for storing waste in piles are not technically challenging. Expedited permitting procedures could benefit the regulated community. Sections 9 VAC 20-80-480, 485, and 400 may be modified to provide a permit by rule for waste piles. Permit by rule will provide an expedited process for permitting waste piles to place the least possible burden on the regulated community while still protecting human health and the environment. The goal of the amended regulation is to: modify the regulation to accommodate a permit by rule for waste piles; review the applicable sections of the regulation to assure provisions to protect human health and the environment and eliminate any unnecessary provisions that do not accomplish this goal.

Legal Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

40 CFR Part 258 provides the federal authority for the criteria for municipal solid waste landfills. The web site address for Part 258 is:

<http://www.epa.gov/epahome/rules.html#codified>

The presently proposed amendment deals with the portions of the regulations that are not affected by the federal requirements and that are not subject to the federal program approval. Therefore, the state regulations are no more restrictive than the federal regulations.

The Virginia Waste Management Act authorizes the Waste Management Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. Article 2 of the Act prohibits the ownership or operation of an open dump, which is defined in §10.1-1400 to be any:

...site on which solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into environment or present a hazard to human health.

The Act further prohibits any person from operating a facility for the disposal, treatment, or storage of non-hazardous solid waste without a permit from the director of the Department of Environmental Quality (§10.1-1408.1 A). The Act requires the permit to contain such conditions or requirements that would prevent a substantial present or potential danger to human health and the environment (§10.1-1408.1 E). Virginia code §10.1-1402(1), and (11) state:

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth...

... 11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

The Virginia Waste Management Act is codified as chapter 14 sections 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. The web site address for the full text is:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC100100001400000000000>

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The current regulations require a full permit for the storage of waste materials on the site of generation when they are stored in piles. Lumber operations and other industries that routinely store waste materials prior to disposal need to stockpile wastes and store the materials in an environmentally sound manner so that the materials do not impact ground water, surface water, or present a fire hazard. An expedited permitting procedure would allow these operations to quickly obtain permits should they wish to store materials in piles.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Section 9 VAC 20-80-480, and 485 may be modified to provide for a permit by rule for waste piles. The permit by rule provision would be similar to those used for transfer stations, materials recovery facilities, incinerators, and composting facilities. Section 485 may provide a list of documentation including plans, certifications and financial assurance that must be submitted by the applicant to the department in order to fulfill the requirements for permit by rule for a waste pile. Section 9 VAC 20-80-400 may be modified to recognize the provisions for permit by rule in Section 485, and will provide reasonable provisions to protect human health and the environment, including provisions to protect surface water and ground water and minimize the potential for fire.

Conditional exemptions under sections 9 VAC 20-80-60 E and 160 and exclusions under section 9 VAC 20-80-150 will be considered during the development of the regulations.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

During the development of the regulations, any alternatives will be considered that protect ground water, surface water and minimize the potential for fire. Alternatives presented by the technical advisory committee and during the public comment period must address these concerns.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives and 3) impacts of the regulation on farm and forest land preservation. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Michael J. Dieter, Virginia DEQ, P.O. Box 10009, Richmond, VA. 23240, Ph: (804) 698-4146, Fax: (804) 698-4327 and mjdieter@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations protect the public's health, safety and welfare and the environment from harmful results of the mismanagement of solid wastes. However, Amendment 4 of the Virginia Solid Waste Management Regulations has no direct impact on the institution of the family.